

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Victor Donnell Fields,

Plaintiff,

v.

Civil No. 09-1288 (JNE/FLN)
ORDER

Thomas Walsch, Vaughn
Herbert, Kao Her, Ronald Julin,
Michael Parks, Joan Fabian,
Bill Deike, Mary Perez,
John King, Dennis L. Benson,
and Prison Official,

Defendants.

This case is before the Court on an Order and Report and Recommendation issued by the Honorable Franklin L. Noel, United States Magistrate Judge, on July 21, 2010. The magistrate judge recommended that Bill Deike's Motion to Dismiss or Alternatively, for Summary Judgment be granted, that the Motion for Summary Judgment of Joan Fabian, Kao Her, Ronald Julin, John King, Michael Parks, Mary Perez, and Thomas Walsch be granted, that this action be dismissed as to Vaughn Herbert, and that this action be dismissed in its entirety. The magistrate judge based the recommendations on Plaintiff's failure to exhaust his administrative remedies. The magistrate judge also denied as moot Plaintiff's Motion to Amend Complaint. Plaintiff objected to the Order and Report and Recommendation. The Court overrules Plaintiff's objection to the Report and Recommendation based on a de novo review of the record, *see* D. Minn. LR. 72.2(b), and overrules Plaintiff's objection to the Order because the Order is neither clearly erroneous nor contrary to law, *see* 28 U.S.C. § 636(b)(1)(A) (2006); D. Minn. LR 72.2(a). Therefore, IT IS ORDERED THAT:

1. Plaintiff's Objection [Docket No. 61] to the Report and Recommendation is OVERRULED, and the Report and Recommendation [Docket No. 60] is ADOPTED.
2. Plaintiff's Objection [Docket No. 61] to the magistrate judge's Order is OVERRULED, and the Order [Docket No. 60] is AFFIRMED.
3. Bill Deike's Motion to Dismiss or Alternatively, For Summary Judgment [Docket No. 30] is GRANTED.
4. The Motion for Summary Judgment of Joan Fabian, Kao Her, Ronald Julin, John King, Michael Parks, Mary Perez, and Thomas Walsch [Docket No. 40] is GRANTED.
5. Plaintiff's claims against Vaughn Herbert are DISMISSED WITHOUT PREJUDICE.
6. This action is DISMISSED WITHOUT PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 18, 2010

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge